



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



352217

JAN 26 2010

Bautsch-Gray Mine Site

BY ELECTRONIC MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

West Galena Development, Inc.
Chains & Links, Inc.
c/o: Robert R. Roth, Esq.
Vincent, Roth & Toepfer, P.C.
122-1/2 N. Main Street
P.O. Box 334
Galena, IL 61036-0334

C-14J

Vincent A. Varsek Trust
c/o: Philip A. Jackman, Esq.
309 N. Main Street
P.O. Box 226
Galena, IL 61036-0226

Re: Bautsch Gray Mine Superfund Site – Final Draft of Proposed CERCLA Administrative Order for Removal Actions – 746 Blackjack Road - Jo Daviess County, Illinois

Dear Mr. Jackman and Mr. Roth:

Enclosed is a modified Administrative Order by Consent ("AOC"), pursuant to Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§9604, 9606, 9607 and 9622 by which your clients would agree to undertake the removal actions determined by the United States Environmental Protection Agency ("U.S. EPA") to be necessary at the Bautsch-Gray Mine Site (746 Blackjack Road Property), in Jo Daviess County, Illinois. As with the previous draft issued by U.S. EPA, the enclosed has not been approved by the official having the legal authority to bind the U.S. EPA, if your client executes the document, the undersigned and the On-Scene Coordinator for this Site will recommend that the Agency enter the AOC in its present form.

I would also like to address some of the concerns raised by each of you on behalf of your respective clients in your communications of January 2010, with regard to the November 2009 General Notice Letters issued by U.S. EPA, and the prior draft AOC sent in December 2009. First, U.S. EPA has modified the AOC to reflect the correct names of the responsible parties in this matter.

You have inquired as to whether the tasks detailed in the 'Work to be Performed' Section of the AOC are all appropriate. U.S. EPA continues to believe that based on the information from the 2000 Illinois EPA Site (IEPA) Assessment, and the 2009 U.S. EPA Site Assessment, that the current and continued threat of lead (and/or other heavy metal) contamination to the 746

Blackjack residential property and its shallow residential well is real, and is based upon the release of hazardous substances in the form of the mine tailings spread from the Site areas owned by your clients to the property of an innocent land owner. U.S. EPA further believes that the above described threat must be addressed as quickly as possible.

You have inquired as to the explicit requirements of the AOC model language at Sections VII, VIII and IX (concerning the securing of a necessary contractor(s), the need to provide work plans and health/safety plans, and the need to meet general record-keeping details and deadlines). U.S. EPA On-Scene Coordinator Len Zintak (who will be in charge of U.S. EPA field work to be done) has assured me that he can be flexible in his interpretation and application of the above referenced Sections of the AOC, as long as the necessary minimum requirements of CERCLA and the National Contingency Plan (at 40 CFR Part 300 et al.) are met.

You have also stated concerns about the need for achieving timely access to the off-Site property (746 Blackjack Road) that is the area to be addressed under the AOC. U.S. EPA has initiated and assisted in many removal actions performed on properties owned by 3rd Parties. A close review of the language of the AOC at Section IX, Paragraphs 24-26 will indicate that PRPs working under the AOC are required to make a good faith demonstration of having expended 'Best Efforts' (Paragraph 25) to secure access. If that is not successful, U.S. EPA will intervene and exercise any necessary government powers to secure a clean up. The PRPs would be required to pay for U.S. EPA's additional efforts. However, in the current matter U.S. EPA has had prior communications with the resident home owner and IEPA, and I do not believe that the access issue will present an insurmountable problem for the PRPs.

Finally, you raised the question of PRP obligation for past and future response costs associated with the current removal action under the AOC. The provisions of the federal Superfund law at CERCLA 107 (42 USC Section 9607) require U.S. EPA to seek to reimburse the federal Superfund for "all costs of removal or remedial action incurred... not inconsistent with the national contingency plan;" See, 42 USC Section 9607(a)(4)(A). "Costs" are also defined to include interest, and would also include costs incurred by U.S. EPA in the development of the present case. See, AOC, Section III ('Definitions' at Paragraph 8(c) and (h)). The costs being discussed would solely concern the actions under this AOC, and no future costs related to any separate future actions at this Site. Thus, I have not modified the costs to be recovered-language (Section XV, Paragraphs 38-41) in this final draft of the AOC.

U.S. EPA is willing to arrange a telephonic conference call with counsel and/or PRPs during the week of February 1, 2010, in order to discuss this letter and the modified final AOC draft. If you wish to arrange such a call, please feel free to contact me by e-mail or at 312/886-6613. U.S. EPA requires that the PRPs execute and return signature pages for the AOC by or before February 8, 2010.

If your client wishes to settle this matter on the terms contained in the enclosed modified AOC, please have it executed by a duly authorized agent, and returned to me. If you have any questions or concerns, please call me immediately. If your client is unwilling to enter into the Order as written, we would appreciate being so advised without delay, so that the agency may undertake an alternative approach to deal with the serious situation at the Site.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Turner', with a stylized flourish at the end.

Thomas Turner
Associate Regional Counsel

Enclosure